WTR/22/1994 1/8 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No. 22 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
HON'BLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF WEALTH-TAX - Applicant(s)

Versus

IBRAHIM A. KAPASI - Respondent(s)

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Appearance :
MR MANISH R BHATT for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 04/08/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench “C” has referred the following question under Section 27(1) of the Wealth Tax Act, 1957 (the Act) at the instance of the Commissioner of Wealth Tax, Rajkot.

> “Whether, the Appellate Tribunal is right in law and on facts in directing the Wealth Tax Officer to consider the interest accrued also for determining the deduction u/s 5(1)(xxxiii)?”

2. The assessment year is 1982-83 and the valuation date is 31st December 1981. The assessee, an individual was a non-resident. It is recorded by the assessing officer in the assessment order that the assessee had claimed exemption under Section 5(1)(xxxiii) of the Act on a sum of Rs.5,51,612/- being the credit balance of the amount lying in the

non-resident external account and accrued interest. The assessing officer, after extracting clause (xxxiii) of sub-section (1) of Section 5 of the Act, held that the assessee had brought only Rs.4,00,000/- from abroad and limited the exemption to the said amount of Rs.4,00,000/- while rejecting the claim for exemption of accrued interest. This order was made on 30th March 1987.

3. The assessee carried the matter in appeal before the Deputy Commissioner of Wealth Tax (Appeals), Rajkot, who vide his order dated 27/3/1989, upheld the claim of the assessee by following the decision of Madras Bench of the Tribunal.

4. The Revenue, therefore, went in appeal before the Tribunal. The entire order of the Tribunal proceeds on an analysis of provision of Section 5(1)(xxxiii) of the Act and records an opinion against the assessee. The Tribunal, however, at the end, states that,

"for the sake of consistency alone with the aforesaid order of the Tribunal cited supra, we hold that the assessee is entitled to the exemption in respect of the interest accrued on the capital amount." This order was made on 28th August 1992. The Tribunal has also followed the decision of the Madras Bench on which reliance had been placed by the Deputy Commissioner (Appeals).

5. Heard Mr.M.R.Bhatt, the learned senior standing counsel for the applicant revenue. Though served, there is no appearance on behalf of the respondent assessee.

6. Mr.Bhatt has invited attention to Explanation 2 below clause (xxxiii) of section 5(1) of the Act. The said Explanation 2 reads as under :

"Explanation 2 :- For the removal of doubts, it is hereby declared that moneys standing to the credit of such person in a Non-resident

(External) Account in any bank in India in accordance with the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder, on the date of his return to India, shall be deemed to be moneys brought by him into India on that date."

7. Explanation 2 is inserted by the Finance Act, 1986 with retrospective effect from 1-4-1977. Therefore, despite the fact that the said Explanation 2 was on the statute book on the respective dates when all the three authorities passed the orders, none of the authorities have even referred to Explanation 2.

8. On a plain reading of Explanation 2, it becomes apparent that what is exempted from the charge of wealth tax are the moneys standing to the credit of a person, namely a person who was ordinarily residing in a foreign country and who, on leaving such foreign country, has returned to India with

the intention of permanently residing in India, then the amount standing to the credit in a Non-resident (External) Account in any bank in India shall be deemed to be moneys brought by him into India on the date of his return to India. In other words, whatever amount is standing to the credit in an NRE Account on the date of return to India would be eligible for exemption under Section 5(1)(xxxiii) of the Act, and the total amount to the credit of the person would take within its sweep the interest accrued till that date, namely, date of return to India. In light of the aforesaid plain language of the provision, even the revenue does not dispute this position.

9. However, unfortunately, neither the assessing officer, nor the first appellate authority nor the Tribunal have applied Explanation 2 to the facts of the case despite the fact that Explanation 2 was already existing on

the statute book when they passed the respective orders. It is not possible to state one way or the other in absence of two basic ingredients for applying Explanation 2, namely, (i) the moneys standing to the credit of the assessee, and (ii) the date on which the assessee returned to India. In absence of these basic details, it is not possible to either uphold the finding recorded by the Tribunal or upturn the same. In fact, it is not possible to render any opinion on the question referred to the Court. It is necessary to note that even the frame of the question is so vague that it does not even specify on which amount / account interest has accrued for the purposes of resolving the controversy.

10. Therefore, in light of what is stated herein before, the question is left unanswered. The Tribunal shall, in the first instance, ascertain the proper and relevant facts,

after giving an opportunity of hearing to the parties and thereafter, decide the controversy between the parties in light of the statutory position applicable to the assessment year under consideration.

11. The reference stands disposed of accordingly with no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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